

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BRUCE CORKER d/b/a RANCHO ALOHA, *et al.* CASE NO. 2:19-cv-00290-RSL

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION, *et al.*

Defendants.

**ORDER AWARDING FEES
AGAINST BUCHALTER P.C.**

This matter comes before the Court on plaintiffs’ “Petition for Attorneys’ Fees and Costs” (Dkt. # 885) and their “Detailed Time Entries and Cost Breakdown” (Dkt. # 892). Having reviewed the memoranda, declarations, and exhibits submitted by the parties and having again reviewed the record underlying the order awarding sanctions, the Court finds as follows:

On July 19, 2023, the Court found that Bradley P. Thoreson, John B. Crosetto, Jennifer Oswald, and the law firm Buchalter P.C. (collectively, “Buchalter”) “unreasonably and vexatiously multiplied the proceedings in this matter” insofar as “[t]heir dogged insistence that they were entitled to rely upon a ‘pleading promise’ and Mr. Thoreson’s insertion of himself as a fact witness resulted in Buchalter’s adoption of unjustified stances and the reckless and knowing disregard of their discovery obligations.” Dkt. # 882 at 4. Although the Court could have required Buchalter to pay all of the excess fees and costs plaintiffs were forced to incur in their years-long attempt to

1 obtain basic discovery from Buchalter's client and to rebut Mr. Thoreson's declarations
2 of "fact," it opted to limit the award of fees and costs to those incurred in bringing this
3 motion. Dkt. # 882 at 6.

4 At the Court's request, plaintiffs provided billing records from December 7, 2022
5 (shortly after Buchalter's client filed for bankruptcy) to July 21, 2023 (two days after the
6 Court granted in part the motion for sanctions against Buchalter). Plaintiffs seek
7 \$147,279.80¹ in fees and costs in this matter. Buchalter objects that the hourly rates
8 charged by non-Washington counsel are unreasonable, that the number of hours spent on
9 activities related to the sanctions motion was unreasonable, that counsel should have used
10 more junior attorneys and fewer shareholders/partners for researching, drafting, and
11 revising their submissions, that block billing makes it impossible to ascertain how much
12 time was spent on a specific task, that too many attorneys attended the sanctions hearing,
13 that plaintiffs should not be permitted to recover fees expended on issues they lost, and
14 that counsel has already been compensated for the activities at issue through the
15 settlements it has negotiated in this case.

16 The Court has carefully considered Buchalter's arguments but is not persuaded.
17 As noted above and recounted in more detail in the Order Granting in Part Plaintiffs'
18 Motion for Sanctions Against Buchalter P.C." Dkt. # 882, Buchalter unreasonably and
19 vexatiously multiplied and obstructed the proceedings over the course of years, causing
20 plaintiffs to incur unnecessary fees and costs trying to distinguish fact from fiction and
21 piecing together the basic purchase, sale, and profit data that was at the heart of this
22 litigation. The amount of fees at issue was extraordinary, and plaintiffs cannot be faulted
23 for putting forth their best efforts towards recovering what Buchalter's conduct had cost
24 them. Recounting and documenting what Buchalter -- separate from its client -- had done
25 over a four year period required the attention and participation of the shareholders and

26
27 ¹ This amount is supported by the billing records submitted by counsel. Karr Tuttle Campbell incurred \$101,586.50 in fees and \$2,355.98 in costs, while Lieff Cabraser Heimann & Bernstein requests \$41,897.50 in fees and \$1,439.82 in costs.

1 partners involved, and their presence at the sanctions hearing ensured that those with
 2 personal knowledge were present to answer any questions the Court may have had.
 3 Counsel's hourly rates, while steep, are not unreasonable given the nature of this
 4 litigation,² and neither instances of block billing nor the pursuit of arguments that were
 5 unsuccessful prevent a finding that the hours expended were reasonable.

6 With regards to the argument that plaintiffs are seeking a double recovery for fees
 7 already compensated through various settlement agreements approved by the Court, it is
 8 true that plaintiffs will likely recover slightly more than their lodestar by the time all
 9 settlements are finalized and that the hours that make up the lodestar include the hours
 10 spent dueling with Buchalter.³ That does not make an award of fees against Buchalter
 11 punitive, non-compensatory, or duplicative in the context of this case, however. Counsel
 12 would have been entirely justified in seeking far greater amounts from their clients as
 13 payment for their work on this litigation, but have instead chosen to seek compensatory
 14 sanctions from Buchalter. When evaluated as a percentage of the common fund, the fees
 15 awarded through the settlement process will be less than 12% of the benefits obtained for
 16 the individual class members (including both the cash recovery for past wrongs and the
 17 present day value of the injunctive relief designed to prevent the exact same type of harm
 18 going forward).⁴ Under a lodestar analysis, plaintiffs would arguably be entitled to a
 19 significant multiplier based on the impressive results achieved for the class⁵ and the risks
 20 associated with the contingent nature of the fee arrangement. Instead of seeking

21
 22 ² The Court rejects Buchalter's argument that counsel whose expertise is needed for the litigation should be
 barred from participating in discovery or sanctions motion because those disputes do not require that expertise.

23 ³ At present, plaintiffs have not yet recovered their lodestar amount. The Mulvadi settlement, if approved,
 will remedy any remaining deficit.

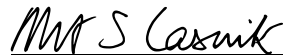
24 ⁴ Although the Ninth Circuit is careful about including the value of injunctive relief in the denominator when
 calculating the percentage of a common fund that is represented by a given fee award, the circumstances presented
 25 here justify the inclusion. The injunctive relief will benefit each individual class member going forward, the benefits
 they will receive from the injunctive relief are concrete and directly tied to the settlements, and plaintiffs have provided
 a reasonable valuation of the relief obtained.

26 ⁵ Plaintiffs' expert calculates that preventing infringing/mislabeled Kona coffee from reaching the market
 will benefit the class by \$81.2 million. Coupled with monetary relief of almost \$41.2 million, individual class members
 27 stand to recover past losses, avoid future losses, and gain the ability to rebuild and safeguard the Kona brand. This
 level of success would justify a success-based multiplier.

1 additional awards out of the common fund their efforts created, counsel seek to hold
2 Buchalter responsible for the excess fees and costs its conduct engendered. The request
3 seeks compensation for expenses directly tied to Buchalter's conduct and can be
4 recovered in addition to, not in place of, the relatively moderate fees paid by the class out
5 of the common fund.

6
7 For all of the foregoing reasons, plaintiffs are hereby awarded \$147,279.80 against
8 Buchalter as compensation for the reasonable fees and costs incurred in bringing the
9 motion for sanctions.

10
11 Dated this 25th day of September, 2023.

12 

13 ROBERT S. LASNIK
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27